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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Robert Ya-Lin Pan

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BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, IL 60610

EXAMINER

OGDEN JR, NECHOLUS

ART UNIT

PAPER NUMBER

1796

MAIL DATE

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12/03/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/600,180	Applicant(s) PAN ET AL.	
	Examiner Necholus Ogden, Jr.	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 43-78 is/are pending in the application.
- 4a) Of the above claim(s) 43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 44-78 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/08</u> . | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

1. Claim 38 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement is withdrawn.
2. Claims 44-59, 60-78 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Beerse et al (6,190,675).

Beerse et al disclose a mild antimicrobial liquid cleansing composition, which provides improved residual benefit versus gram-positive bacteria. Beerse et al disclose that said cleansing composition comprises 1 to 80% by weight of an anionic surfactant such as alkyl glyceryl sulfonates having 8 to 24 carbon atoms (col. 8, lines 15-57 and col. 10, lines 15-25) and wherein the head group of the anionic surfactants are less than about 15 Angstroms (col. 12, lines 1-26); 0.1 to 12% by weight of a proton donating agent such as organic acids having a pKa of below 5.5 citric, adipic, malic, succinic and lactic and gluconic acid (col. 14, lines 1-53) and a pH of from 3.0 to 5.0 (col. 15, lines 1-17). Examples 1-9 at column 30 show C12 sulfates; citric acid; lauroamphoacetate; para-chloro-meta-xyleneol; pH of 3.5-5; and small/large head group size with an anionic surfactant primary chain length of 12.

As this reference teaches all of the instantly required it is considered anticipatory.

In the alternative that the above disclosure is insufficient to anticipate the above listed claims, it would have nonetheless been obvious to the skilled artisan to produce the claimed composition, as the reference teaches each of the claimed ingredients within the claimed proportions for the same utility.

Response to Arguments

3. Applicant's arguments filed 08-12-2008 have been fully considered but they are not persuasive.

4. Applicant argues that Beerse et al do not teach or suggest the specific acid scavenger or anionic surfactants.

The examiner contends that the compositions of Beerse et al are the same and/or similar compositions of the claimed invention and would inherently perform the same function and have similar characteristics. Specifically, Beerse et al teach citric acid and gluconic acid or mixtures thereof and applicant's C12 sulfates (see above).

"[T]he discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art's functioning, does not render the old composition patentably new to the discoverer." *Atlas Powder Co. v. Ireco Inc.*, 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property, which is inherently present in the prior art does not necessarily make the claim patentable. *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977).

5. The examiner contends that Beerse et al teach the specific anionic surfactant and citric acid in Examples 1-9 as stated above.

6. The Declaration under 37 CFR 1.132 filed 10-30-2007 is insufficient to overcome the rejection of claims 4-38 based upon Beerse et al as set forth in the last Office action because: First, applicants have not removed the claims from the statutory bar of 102(b). Secondly, the showing is not commensurate in scope with the claimed

invention. Therefore, criticality cannot be established. For example, applicant's most comprehensive claim 38 discloses broad compositions of an gluconic or pyroglutamic acid, a short chain alkyl sulfate, and citric acid. The examples provided by Declarant and further submitted in the specification are drawn to very specific examples 1-11, which includes very specific anionic surfactants, and only example 10 requires gluconic acid, citric acid and the very specific sodium octyl glyceryl sulfonate anionic surfactant. Accordingly, the declaration is given little patentable weight since the claims are not commensurate in scope with the examples.

Whether the unexpected results are the result of unexpectedly improved results or a property not taught by the prior art, the "objective evidence of nonobviousness must be commensurate in scope with the claims which the evidence is offered to support." In other words, the showing of unexpected results must be reviewed to see if the results occur over the entire claimed range. In re Clemens, 622 F.2d 1029, 1036, 206 USPQ 289, 296 (CCPA 1980)

7. Claims 44-78 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wei et al US 2002/0098159 A1 ('159).

•'159 teach an antimicrobial composition comprising surfactants and organic and/or inorganic acids (abstract). The compositions of '159 comprise about 0.1% to about 20% of a proton donating agent or organic acid (p. 2-3, [0030-0033]). Organic acids as taught by '159 are adipic acid, tartaric acid, citric acid, succinic acid, glycolic acid, glutaric acid, gluconic acid, etc (p. 3, [0041-0042]).

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- '159 teach a pKa of less than about 6.0 and a pH from about 2.0 to about 6.0 and more preferably. from about 2.5 to about 4.5 (p.3, [0035, 0040]). '159 teach Examples 2-8 with a pH of 3.0-4.0.
- '159 teach surfactants, preferably anionic surfactants from about 0.05% to about 20%, such as alkyl and alkyl ether sulfates, sulfated monoglycerides, sulfated olefins, alkylaryl sulfonates, primary or secondary alkyl sulfonates, alkyl sulfosuccinates, acyl isethionates, alkyl glycerylether sulfonate, sulfonated methyl esters, sulfonated fatty acids etc (p. 3, [0045-0046]). The alkyl ether sulfates for example are taught to be saturated, unsaturated, and have branched or unbranched alkyl groups from about 8 to about 24 carbon atoms (p. 3, [0046], claim 19). '159 teach that the preferred surfactants are alkyl glycerylether sulfonate, alkyl benzene sulfonates, primary or secondary alkyl sulfonates, etc (p.6, [0076]).
- '159 teach hydrocarbon oil and waxes and silicone oils (p.10, [0264-0267, 0275]).
- Examples of '159 teach compositions comprising active antimicrobials (Examples 1-7) and compositions without active agents (Example 8 teaches only organic acid and surfactant composition) and claim a composition comprising organic acid and surfactants such as anionic only.
- '159 teach adding petrolatum, mineral oil, microcrystalline waxes, polyalkenes (e.g. hydrogenated and nonhydrogenated polybutene and polydecene), silicone, oils, such as dimethicone copolyol, dimethylpolysiloxane, etc (p. 10, [0265, 267, 0272]).

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- '159 teach co-surfactants consisting of additional anionic, nonionic, cationic, and amphoteric or zwitterionic surfactants in the amount of less than 10% by weight of the composition (p.6, [0074]). Sulfonate zwitterionic surfactants are taught by '159 as having a preferable chain length of C8-C18 and sulfonates (p.6, [0069]).
- '159 teach nonionic surfactants such as isopropanol, aliphatic diols such as "propylene glycol and butylenes glycol, polyols such as glycerin and sorbitol, (p.7, [0091-0092]) and Genapol 24 series of ethoxylated alcohols, polyethylene glycol cocoate, Pluronic propylene oxide/ethylene oxide surfactants, etc (p. 10, [0260]).
- '159 teach personal cleansing products to treat minor wound infections as well as mild microbial skin infections (e.g., dandruff, crotch itch, athletes foot and the like) and for treating acne (p.2, [0012, 0023-0024]).
- '159 teach disinfecting and cleansing human or animal skin, and non skin surfaces such as household surfaces, e.g. countertops, kitchen surfaces, food preparing surfaces; major household appliances, cabinets, walls, floors, bathroom surfaces, etc (p. 15, [0321-0322]). • Antimicrobial compositions and wipes are taught, as well as polymeric sponges for use with liquid cleanser or with the water insoluble substrate (p. 15, [0319, 0332]. As is the method for impregnating liquids into absorbent sheets (p. 15, [0327]). '159 teach a composition of a sanitizer, spray, foam, gel, cream, lotion, powder, ointment, tincture, etc.
- '159 teach that the phrase "antimicrobial composition" of their invention refers to the compositions ability to inactivate, destroy or kill microorganisms (i.e. bacteria

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and viruses) (pg.2, [0023]). '159 teach a leave on antimicrobial composition.

•'159 teach the method of providing immediate inactivation or destruction of a susceptible virus comprising the step of contacting the virus with a sage and effective amount of the composition . '159 teach rhinovirus, and providing improved and immediate anti-viral (anti-rhinoviral) activity and antibacterial activity from rhinoviral colds (pg. 1, [0004-0006, 0009]).

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholus Ogden whose telephone number is 571-272-1322. The examiner can normally be reached on M-Thu.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Necholus Ogden, Jr./
Primary Examiner, Art Unit 1796

no
11-22-08